

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF LOUISIANA

IN THE MATTER OF

NUMBER

**EVANS INDUSTRIES, INC.**

06-10370  
SECTION A

DEBTOR

CHAPTER 11

**SETTLEMENT AGREEMENT**

WHEREAS, on April 25, 2006 (the "Petition Date"), Evans Industries, Inc. (the "Debtor") filed a voluntary petition with the United States Bankruptcy Court for the Eastern District of Louisiana (the "Court") for relief under Title 11 of the United States Code (the "Bankruptcy Code") which is administered as Case No. 06-10370 (SECTION A) (the "Chapter 11 Case");

WHEREAS, on September 1, 2006, the United States, on behalf of the Environmental Protection Agency ("EPA"), filed a proof of claim (the "Proof of Claim") against the Debtor;

WHEREAS, the Proof of Claim asserts, inter alia, a claim, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., that the Debtor arranged for the treatment or disposal of hazardous substances that it owned or possessed at the Malone Service Company Superfund Site ("Malone Site") located in Texas City, Galveston County, Texas, and that the Debtor is liable for unreimbursed environmental response costs incurred by the United States and for response costs incurred in the future by the United States at the Malone Site ("EPA Claim");

WHEREAS, by Order dated October 24, 2006, the Court confirmed the Amended Plan of Reorganization as Amended and Modified Through October 17, 2006 ("the "Plan").

WHEREAS the Distribution Trustee for Evans Industries, Inc. Distribution Trust ("Distribution Trustee") filed an objection to the Proof of Claim on May 1, 2007;

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve the EPA Claim;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court as follows:

1. The EPA Claim shall be deemed allowed as a general unsecured claim of the kind specified in 11 U.S.C. § 726(a)(2) in the amount of \$1,238,763.80. The Proof of Claim of the United States on behalf of EPA is settled and satisfied in full by the terms of this Settlement Agreement.

2. The EPA Claim shall be paid in the same manner and to the same extent as other general unsecured claims without discrimination, in accordance with the terms of the Plan. Class 16 of the Plan provides for the treatment of general unsecured claims in accordance with Article XI (Distribution Trust).

3. Payment on the EPA Claim shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 90-11-3-08926 and U.S.A.O. file no. 2007V00237, in accordance with instructions provided by the United States to the Debtor after execution of this Settlement Agreement. Any

EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

4. Only the amount of cash received by EPA (or net cash received by EPA on account of any non-cash distributions) from the Distribution Trustee under this Settlement Agreement for EPA's allowed Unsecured Claim, and not the total amount of the allowed claim, shall be credited by EPA to its account for the Malone Site, which credit shall reduce the liability of non-settling potentially responsible parties to EPA for the Malone Site by the amount of the credit. Distributions received by EPA will either be deposited in site specific special accounts within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Malone Site, or be deposited into the EPA Hazardous Substance Superfund.

5. In consideration of the payments or distributions that will be made by the Distribution Trustee under the terms of this Settlement Agreement, and except as provided in paragraph 6, the EPA covenants not to bring a civil action or take administrative action against the Debtor, Debtor's estate and the Distribution Trustee pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, relating to the Malone Site. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Debtor, Debtor's estate and the Distribution Trustee of their obligations under this Settlement Agreement. This covenant not to sue extends only to the Debtor, Debtor's estate and the Distribution Trustee and does not extend to any other person.

6. The covenant not to sue set forth in the previous paragraph does not pertain to any matters other than those expressly specified in the previous paragraph. The United States

reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor, the Debtor's estate and the Distribution Trustee, with respect to claims based on a failure by the Debtor, the Debtor's estate, and the Distribution Trustee, to meet a requirement of this Settlement Agreement. This settlement does not address the responsibility of the Debtor, Debtor's Estate or the Distribution Trustee, if any, for Natural Resource Damages at the Malone Site.

7. With regard to claims for contribution against the Debtor, the Debtor's estate, and the Distribution Trustee for matters addressed in this Settlement Agreement, the Debtor, the Debtor's estate, and the Distribution Trustee are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

8. The Distribution Trustee, the Debtor and Debtor's estate agree not to assert any claims or causes of action against the United States with respect to the Malone Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Malone Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Sections 106, 111, 112, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9611, 9612, and 9613, or 40 C.F.R. § 300.700(d).

9. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. This Settlement Agreement shall not in any manner limit, abridge or otherwise impair the scope and effect of the Debtors' discharge under Section 1141 of the Bankruptcy Code as set forth in the Plan as to any third parties or any Claims that are not addressed by this Settlement Agreement.

10. This Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. The Distribution Trustee agrees to exercise its reasonable best efforts to obtain the approval of the Bankruptcy Court. This Settlement Agreement will be lodged with the Bankruptcy Court and submitted for public comment following notice of the proposed settlement in the Federal Register by the United States. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

11. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

12. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

FOR THE UNITED STATES OF AMERICA

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FOR THE ENVIRONMENTAL PROTECTION AGENCY

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FOR THE DISTRIBUTION TRUSTEE

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